

**WEST VIRGINIA PUBLIC EMPLOYEES
GRIEVANCE BOARD**

SYNOPSIS REPORT

Decisions Issued in September 2022

The Board's monthly reports are intended to assist public employers covered by a grievance procedure to monitor significant personnel-related matters which came before the Grievance Board, and to ascertain whether any personnel policies need to be reviewed, revised or enforced. W. Va. Code §18-29-11(1992). Each report contains summaries of all decisions issued during the immediately preceding month.

If you have any comments or suggestions about the monthly report, please send an e-mail to wvgb@wv.gov.

NOTICE: These synopses in no way constitute an official opinion or comment by the Grievance Board or its administrative law judges on the holdings in the cases. They are intended to serve as an information and research tool only.

TOPICAL INDEX
HIGHER EDUCATION EMPLOYEES

KEYWORDS: Termination; At-Will Employee; Public Policy; Retaliation

CASE STYLE: Powell v. BridgeValley Community and Technical College/ AND
DOCKET NO. 2022-0763-BVCTC (9/21/2022)

PRIMARY ISSUES: Whether Grievant proved that his employment termination was the result of reprisal or was otherwise imposed in violation of a substantial public policy.

SUMMARY: Grievant was employed by Respondent as the Chief Procurement Officer, an at-will position. Grievant contends he was wrongfully terminated. Grievant alleges Respondent retaliated against him for reporting concerns regarding institutional obligations. Grievant has the burden to prove by a preponderance of the evidence that the termination of his employment is in contravention of substantial public policy.

As an at-will employee, Grievant could be terminated at any time for a good reason, bad reason, or no reason at all, but not for rationale which contravene a substantial public policy. At the time of dismissal, Respondent did not provide Grievant with any reason for his termination. Over the course of time, and especially during the level three of this grievance, Respondent has identified and established legitimate, nonretaliatory rationales for terminating Grievant's employment. Grievant failed to prove that his termination was the result of reprisal or was otherwise imposed in violation of a substantial public policy. Accordingly, this Grievance is DENIED.

TOPICAL INDEX
COUNTY BOARDS OF EDUCATION
SERVICE PERSONNEL

KEYWORDS: Termination; Willful Neglect of Duty; Unsatisfactory Performance; Unexcused Absences; Improvement Plan; Correctable Conduct; Arbitrary and Capricious; Mitigation

CASE STYLE: Williams v. Kanawha County Board of Education
DOCKET NO. 2022-0403-KanED (9/14/2022)

PRIMARY ISSUES: Whether Respondent proved Grievant's conduct was willful, not correctable, and that it was justified in terminating Grievant's employment.

SUMMARY: Grievant was employed by Respondent as an Aide/Autism Mentor. Grievant's employment was terminated for willful neglect of duty and unsatisfactory performance for failure to follow Respondent's attendance policy. Respondent proved Grievant's conduct was willful, not correctable, and that it was justified in terminating Grievant's employment. Grievant failed to prove mitigation of the termination of his employment was warranted. Accordingly, the grievance is denied.

TOPICAL INDEX
STATE EMPLOYEES

KEYWORDS: Termination; Falsely Charting Patient Behavior; Patient Restraints; Hearsay

CASE STYLE: Spurlock v. Department of Health and Human Resources/William R. Sharpe, Jr. Hospital
DOCKET NO. 2019-1863-CONS (9/8/2022)

PRIMARY ISSUES: Whether Respondent had good cause to terminate Grievant's employment.

SUMMARY: Grievant was dismissed from her employment as an RN at Sharpe Hospital by Respondent, the Department of Health and Human Resources. Respondent alleged that Grievant improperly ordered mechanical restraints on a patient, but it failed to have any eyewitness testify. Respondent instead chose to rely on inaudible video evidence and hearsay that garnered little weight. It thus failed to prove that Grievant ordered the restraints. Respondent also claimed that Grievant "falsely charted behaviors [she] had not actually witnessed." Respondent did not prove that this or Grievant's failure to initially differentiate hearsay from firsthand information was false charting. Respondent thus failed to prove good cause for dismissal. This grievance is therefore GRANTED.

KEYWORDS: Motion to Dismiss; Timelines; Untimeliness; Continuing Practice

CASE STYLE: Drainer v. Division of Highways
DOCKET NO. 2022-0179-DOT (9/27/2022)

PRIMARY ISSUES: Whether this grievance was timely filed.

SUMMARY:

KEYWORDS: Termination; Good Cause; Drug Test; Drug Screening; Substance Abuse; DOT Policy 3.15; Confirmation Test; Return to Duty; Follow-Up; Substance Abuse Professional; SAP; Refusal to Test; Testing Procedures; Medical Review Officer; MRO; Collector; Positive; Negative

CASE STYLE: Justus v. Division of Highways
DOCKET NO. 2022-0365-DOT (9/27/2022)

PRIMARY ISSUES: Whether Respondent proved by the preponderance of the evidence that Grievant violated its policy on substance abuse thereby justifying Grievant's dismissal.

SUMMARY: Grievant was employed by Respondent as a Transportation Worker 1 Craft Worker (TW1CW). After being off work for more than thirty days, Grievant was required to submit to drug testing before returning to work. At this drug test, Grievant was unable to provide an adequate urine sample; therefore, it was considered a "refusal to test." Respondent then suspended Grievant for "at least five working days," then referred to a substance abuse professional (SAP). Grievant did not grieve this suspension. After completing the SAP's program, she was scheduled to do a series of follow-up tests, the last of which performed indicated the presence of cocaine in her sample. Respondent dismissed Grievant for violating its policy on "Drug and Alcohol Testing." Grievant grieved her dismissal asserting that she did not use cocaine, that the test results were incorrect, and that she was not given a second drug test to confirm the first test's accuracy. Respondent failed to prove by a preponderance of the evidence that Grievant's October 5, 2021, drug test was positive for the presence of cocaine and that Grievant's dismissal was warranted. Accordingly, this grievance is GRANTED.